

CITY OF SAN DIEGO
RIGHT OF ENTRY PERMIT

THIS CITY OF SAN DIEGO RIGHT OF ENTRY PERMIT ("Permit") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), and the SAN YSIDRO BUSINESS ASSOCIATION ("PERMITTEE"), to be effective upon the date signed by CITY (the "Effective Date"), when signed by the parties and approved by the San Diego City Attorney, as follows:

DEFINITIONS

As used in this Permit, the following terms shall be defined as follows:

- A. **"Permit Area"** shall mean one office space of that certain CITY – owned real property in the County of San Diego, State of California, located at 663 E. San Ysidro Blvd, San Diego, CA 92173 (the "Property").
- B. **"Permit Use"** shall mean the nonexclusive use of the permit area for Office Use.
- C. **"Rent"** Shall mean monetary consideration to CITY as follows:
 - a. For the sum of Five dollars per day (\$5.00) for the total of Eighty dollars for the entire Term of this Permit.
- D. **"Security Deposit"** None shall be collected.

NOW, THEREFORE, FOR VALUABLE CONSIDERATION, the sufficiency of which is acknowledged, the parties agree as follows:

- 1. Right to Enter. Subject to the terms and conditions of this Permit, CITY hereby grants permission to PERMITTEE, its officers, employees, agents and contractors to enter upon and occupy the Permit Area solely for the purpose of the Permit Use.
- 2. Use of Permit Area. PERMITTEE may use the Permit Area on a non-exclusive basis for office use only.
- 3. Permit Fee. No Consideration to CITY for granting the license under this Permit shall be collected.
- 4. Term. The term of this Permit ("Term") shall commence on the Effective Date of June 1st, 2011, and shall expire on June 16th, 2011; CITY may terminate this Permit at will, in its sole discretion.
- 5. CITY'S Consent, Discretion. Whenever required under this Permit, CITY'S consent or

approval shall mean the written consent or approval of the Mayor of San Diego, or his or her designee ("Mayor"), unless otherwise expressly provided. CITY'S discretionary acts hereunder shall be made in the Mayor's discretion, unless otherwise expressly provided.

6. Insurance. PERMITTEE represents and warrants to CITY that it is self insured in accordance with applicable law, and shall pay all claims related to this Permit, the Permit Project, or PERMITTEE'S use of the Permit Area that would be covered by a third-party insurance company in the usual course of business, including without limitation General Public Liability Insurance with limits not less than Two Million Dollars (\$2,000,000) per occurrence of Bodily Injury, and Two Million Dollars (\$2,000,000) per occurrence of Property Damage. Upon request, PERMITTEE shall provide CITY evidence of insurance or its ability to self insure.
7. Hold Harmless. PERMITTEE shall protect, defend, indemnify, and hold CITY, its elected officials, officers, representatives, agents and employees, harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to PERMITTEE'S officers, employees, invitees, guests, agents, or contractors which arise out of or are in any manner directly or indirectly connected with this Permit, the Permit Project, or PERMITTEE'S use of or the Permit Area, and all expenses of investigating and defending against same, including without limitation attorney fees and costs; provided, however, that PERMITTEE'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of CITY, its elected officials, officers, representatives, agents and employees. The rights and obligations under this section shall survive the expiration or termination of this Permit.
8. PERMITTEE'S Risk. PERMITTEE shall bear all risks and liability arising out of or in any manner directly or indirectly connected with PERMITTEE'S use of the Permit Area and any damages to the improvements on, under, or in the vicinity of the Permit Area resulting directly or indirectly thereby.
9. Revocable License. This Permit is not a lease. It is a non-exclusive license to use CITY property, and may be revoked at will by CITY, in its sole discretion. CITY shall not be obligated for any loss, financial or otherwise, which may be incurred by PERMITTEE as a result of such revocation or the termination of this Permit. PERMITTEE expressly waives any claim for expense or loss which PERMITTEE might incur as a result of CITY'S termination of this Permit. CITY may at all times enter upon the Permit Area.
10. Compliance with Law. PERMITTEE shall, at its sole cost and expense, comply with all laws and the requirements of all municipal, state, and federal authorities now in effect or which may hereafter be in effect, which pertain to the Permit Area and the Permit Project.
11. No Assignment. PERMITTEE shall not assign any rights granted by this Permit or any interest therein without CITY'S prior written consent.
12. Encumbrances. PERMITTEE shall keep the Property and the Permit Area free from all

encumbrances and liens of any nature which arise out of or are in any manner directly or indirectly connected with this Permit, the Permit Project, or PERMITTEE'S use of the Permit Area. PERMITTEE shall protect, defend, indemnify, and hold CITY harmless from and against any and all such encumbrances and/or liens, and from and against any claim, liability, cost or expense, including without limitation all attorney fees and costs, relating to or charged against the Property or the Permit Area, including without limitation PERMITTEE'S failure or the failure of any contractor or subcontractor hired by PERMITTEE to pay any person or persons referred to in Section 3181 of the California Civil Code or other applicable sections thereof.

13. Maintenance of the Permit Area. PERMITTEE shall, to CITY'S satisfaction, maintain the Permit Area in a decent, safe, healthy and sanitary condition at all times during the Term.
14. Grading. PERMITTEE represents and warrants that any grading and compaction operations shall be done in such a manner that will not disrupt the existing surface drainage pattern and the final grades will not interfere with the existing flow pattern.
15. Inspection. CITY may, at any and all times, enter and inspect the Permit Area and/or the Permit Project.
16. Hazardous Substances.
 - a. PERMITTEE shall not allow the installation or release of hazardous substances in, on, under, or from the Permit Area. For the purposes of this provision, a release shall include but not be limited to any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leeching, dumping, or otherwise disposing of hazardous substances. "Hazardous substances" shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State of California's list of hazardous substances. A copy of the presently effective EPA and the State lists is on file in the Office of the City Clerk as Document 769704 and by this reference is incorporated into this Permit.
 - b. If any release of a hazardous substance occurs, PERMITTEE shall pay all costs of remediation and removal of the hazardous substance in accordance with all applicable laws and rules and regulations of governmental authorities.
 - c. PERMITTEE shall protect, defend, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from PERMITTEE'S use or maintenance of the Permit Area, including but not limited to costs of environmental assessments, costs of remediation and removal, any necessary response costs, damages for injury to natural resources or the public, and costs of any health assessment or health effect studies.
 - d. If PERMITTEE knows or has reasonable cause to believe that any hazardous substance has been released on or beneath the Permit Area, PERMITTEE shall

give written notice to CITY within three (3) days of receipt of the knowledge or cause for belief. If PERMITTEE knows or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, PERMITTEE shall notify CITY immediately upon receipt of such knowledge or belief and shall take all actions necessary to alleviate the danger. PERMITTEE shall notify CITY immediately of any notice of violation received or initiation of environmental actions or private suits related to the Permit Area. PERMITTEE and PERMITTEE'S agents and contractors shall not store, utilize, or sell any hazardous substance on the Permit Area without CITY'S prior written consent.

17. Waiver. CITY'S failure to insist upon the strict performance of any of PERMITTEE'S obligations under this Permit, in one or more instance, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. The property constituting the Permit Area is CITY-owned and held in trust for the benefit of CITY'S citizens. CITY'S failure to discover a breach of any obligation of this Permit or take prompt action to require the cure of any such breach shall not result in an equitable estoppel, but CITY may at any and all times require the cure of any such breach.
18. Survival. Any obligation which accrues under this Permit prior to its expiration or termination shall survive such expiration or termination.
19. Entire Agreement. This Permit constitutes the entire agreement between the parties and supersedes any and all prior understandings, representations, warranties and agreements between the parties. Any modification, alteration, or amendment of this Permit shall be in writing and signed by all the parties hereto.
20. Legal Proceedings. If CITY commences legal proceedings to enforce any right or obligation under this Permit, PERMITTEE shall pay all costs in connection therewith, including reasonable attorney fees and costs.
21. Notices. Any notice required or permitted to be given under this Permit shall be in writing and may be served personally or by United States mail, postage prepaid, and addressed to CITY or PERMITTEE, respectively, as follows:

THE CITY OF SAN DIEGO
Real Estate Assets Department
1200 Third Avenue, Suite 1700 (MS 51A)
San Diego, CA 92101

SAN YSIDRO BUSINESS ASSOCIATION
663 E. San Ysidro Blvd.
San Diego, CA 92173

22. Governmental Approvals. By entering into this Permit, neither CITY nor CITY'S City Council is obligating itself to any other governmental agent, board, commission, or agency

with regard to any other discretionary action relating to the Permit Project or PERMITTEE'S use of the Permit Area. Discretionary action includes but is not limited to re-zonings, variances, environmental clearances, or any other governmental agency approvals which may be required for the Permit Project or PERMITTEE'S use of the Permit Area.

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23. Authority to Contract. Each individual executing this Permit on behalf of another person or legal entity represents and warrants that he/she is authorized to execute and deliver this Permit on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this Permit is binding upon such person or entity in accordance with its terms.

IN WITNESS WHEREOF, this Permit is executed to be effective as of the Effective Date.

Date: 6/7/11

THE CITY OF SAN DIEGO, a California municipal corporation

BY: [Signature]
Name: James F. Barwick, CCIM
Title: Director, Real Estate Assets

Date: 5/31/11

SAN YSIDRO BUSINESS ASSOCIATION

BY: [Signature]
Name: CARLOS VARGAS
Title: EXECUTIVE DIRECTOR

ENVIRONMENTAL ANALYSIS SECTION ENVIRONMENTAL CLEARANCE:

THIS ACTIVITY IS CATEGORICALLY EXEMPT FROM CEQA PURSUANT TO STATE CEQA GUIDELINES, SECTION 15301.

Date: 5-31-11

BY: NICOLE A. MCGINNIS
Name: Nicole A. McGinnis
Title: SR. PLANNER

APPROVED AS TO FORM AND LEGALITY:

JAN I. GOLDSMITH, City Attorney

BY: [Signature]
David L. Herman, Deputy City Attorney